IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6925 of 2007()

[CRIME NO.1030/2007 OF TIRUR POLICE STATION]

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: PETITIONER/4TH ACCUSED

PALLATH NAZER, S/O. HAMEED,
PALLATH HOUSE, PARAVANNA P.O., TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, TIRUR,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6925 of 2007

Dated this the 14th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 4th accused. Altogether there are 13 accused persons. The alleged incident took place on 28.9.07. An unlawful assembly of which the petitioner was also a member, had allegedly indulged in culpable overt acts. They were armed with dangerous weapons like swords and iron sticks. The petitioner was allegedly wielding an iron stick. 4 persons suffered injuries. Investigation is in progress. The petitioner has not been arrested so far. Political animosity is the alleged motive for the occurrence.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. The victim/defacto complainant is involved in several other crimes, submits the learned counsel for the petitioner. The petitioner had also suffered injuries and he was admitted in the hospital. No counter case has been registered. The learned counsel for the petitioner in these circumstances prays that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. All the available indications point to the culpability of the petitioner. Specific overt acts are alleged against the petitioner. The petitioner has criminal antecedents also. Political animosity is the alleged motive. Serious view is liable to be taken considering the nature of the offence. At any rate, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner, submits the learned Public Prosecutor .

4. I find merit in the opposition by the learned Public Prosecutor. I am not satisfied that there are any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders

before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-